

California statutory and common law claims were not viable in Texas.⁴ Before Plaintiffs filed their response to Defendant's Motion to Dismiss, the Parties began class certification discovery so that Defendant can properly respond to Plaintiffs' motion to certify a class based on the claims in Plaintiffs' Second Amended Complaint.

3. Plaintiffs filed their response to Defendant's Motion to Dismiss on January 4, 2017.⁵ In their response, Plaintiffs acknowledge that their extra-territorial California claims are not properly before the Court.⁶

4. Based on this acknowledgement, Defendant moved to strike Plaintiffs' Motion for Class Certification, arguing that Plaintiffs cannot seek to certify a class based on non-viable California claims.⁷

5. Plaintiffs oppose Defendant's Motion to Strike Plaintiffs' Motion for Class Certification, but acknowledge that two of the named Plaintiffs—Edison Zorilla and Morris Taibel—executed arbitration agreements, and that the issue of whether those arbitration agreements are enforceable has been decided in the affirmative by numerous district courts and the Ninth Circuit Court of Appeals.⁸

6. Plaintiffs intend to file a Motion for Leave to File a Third Amended Complaint removing Plaintiffs Zorilla and Taibel as named Plaintiffs and alleging causes of action under Texas law by no later than Thursday, February 16, 2017.⁹ Plaintiffs further intend to add two new Plaintiffs to the lawsuit as class representatives. Because these individuals have not yet

⁴ See Dkt. No. 74.

⁵ See Dkt. No. 81, pp. 9-10.

⁶ *Id.*

⁷ See Dkt. No. 83.

⁸ See Dkt. No. 91, p. 2.

⁹ By joining in this Motion, Defendant does not waive any arguments with respect to Plaintiffs' anticipated motion for leave to file a third amended complaint, and Defendant reserves the right to oppose such motion.

been identified by Plaintiffs, it is impossible for the Parties to conduct class certification discovery with respect to these two Plaintiffs.

7. Plaintiffs intend to file an Amended Motion for Class Certification by no later than 5 business days after the Court rules on Plaintiffs' anticipated Motion for Leave to File a Third Amended Complaint.

8. The Parties recognize that it is impractical to continue class certification discovery when two of the named Plaintiffs have not yet been identified and the anticipated causes of action under Texas law are not yet before the Court. Continuing class certification discovery under these circumstances would result in a significant waste of both Parties' resources and the Court's time.

9. The Parties jointly propose that the deadlines for class certification discovery and related briefing be extended for a period of seventy-five (75) days to allow Plaintiffs sufficient time to file a Motion for Leave to File a Third Amended Complaint and an Amended Motion for Class Certification.

10. The Parties respectfully request that following a ruling on Plaintiffs' Motion for Leave to File a Third Amended Complaint, the Court set a status conference to confer with the Parties on pending motions and deadlines.

11. The Parties do not bring this motion for purposes of delay, but so that justice may be done. No other deadlines have been set in this matter, so granting the relief requested herein should not affect the Court's docket.

For these reasons, the Parties respectfully request the Court enter an Order enlarging all class certification discovery and related briefing deadlines for a period of seventy-five (75) days, and further Order the Parties to appear at a status conference following a ruling on Plaintiffs'

Motion for Leave to File a Third Amended Complaint.

Dated February 10, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

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